

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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|--|---|--------------------|
| KATHY ENDERSBY, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | NO. CIV-09-1034-HE |
| |) | |
| MICHAEL J. ASTRUE, Commissioner |) | |
| of the Social Security Administration, |) | |
| |) | |
| Defendant. |) | |

ORDER

Plaintiff Kathy Endersby filed this action seeking judicial review of the defendant Commissioner's final decision denying her application for supplemental security income benefits. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to Magistrate Judge Doyle W. Argo, who has recommended that the Commissioner's decision be affirmed. The plaintiff has filed an objection to the Report and Recommendation, reurging arguments made to the magistrate judge.

The plaintiff filed her application for benefits in April, 2007, and, when it was denied initially and on reconsideration, she requested a hearing before an Administrative Law Judge ("ALJ"). After the hearing at which the plaintiff appeared with a non-attorney representative and a medical expert testified, the ALJ issued his decision concluding that the plaintiff was not disabled. When the Appeals Council denied the plaintiff's request for review, the ALJ's decision became the final decision of the Commissioner.


Having given the plaintiff's objections de novo review, the court agrees with the magistrate judge that the ALJ properly evaluated the medical opinion of plaintiff's treating

physician¹ and that the ALJ's finding that plaintiff's mental impairments were not severe in the absence of substance abuse was supported by substantial evidence. In her objections plaintiff cites evidence supporting her position while ignoring other parts of the record.² As the magistrate judge noted, "[w]hile there is certainly evidence of record to support Plaintiff's argument that her mental impairment is severe even when she is not abusing drugs, it is not the Court's function to reweigh the evidence or substitute its judgment for that of the Commissioner." Report and Recommendation, p. 14.

The court, having reviewed the record and considered plaintiff's arguments, agrees with the magistrate judge's analysis and adopts his Report and Recommendation.. Accordingly, the Commissioner's decision is **AFFIRMED**.

IT IS SO ORDERED.

Dated this 11th day of January, 2011.



JOE HEATON
UNITED STATES DISTRICT JUDGE

¹Plaintiff criticizes the ALJ and magistrate judge for not discussing the length and nature of her treating relationship with her physician, Dr. Mitchell. Plaintiff's objections, p. 10 n.8. While those factors were not explicitly discussed, as the magistrate judge noted, "the decision need not include an explicit discussion of each factor," so long as the record reflects the weight the ALJ gave the opinion and the reasons for that weight. Report and Recommendation, p. 6.

²The court does not agree with plaintiff that the magistrate judge "fill[ed] in the gaps of the ALJ's overly vague reasoning with evidence never mentioned in his decision." Plaintiff's Objections, p. 5